

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

IN THE MATTER OF:

CARMEN INES ROSADO RAMOS,

Debtor.

CARMEN INES ROSADO RAMOS,

Movant,

v.

RAFAEL A. ORTIZ NEGRON,

Respondent,

ROBERTO ROMAN VALENTIN,

Chapter 7 Trustee.

CASE NO. 12-00327 (BKT)

CHAPTER 7

AVOIDANCE OF LIEN PURSUANT TO
11 U.S.C. § 522(f)

**MOTION SUBMITTING TRANSCRIPTS OF
ARGUMENTATIVE HEARING HELD ON APRIL 10, 2012**

TO THE HONORABLE COURT:

NOW COMES, Debtor, Carmen Inés Rosado Ramos, represented by the undersigned attorney, and very respectfully states and prays as follows:

1. On April 10, 2012, this Honorable Court held an argumentative hearing concerning Creditor Rafael A. Ortiz-Negrón's Motion for Lift of Stay and Debtor's Opposition thereto. See Minute at Docket No. 30.

2. After filing of the Notice of Appeal at Docket No. 61, Debtor requested and recently obtained the Court's authorized reporter's transcripts of such hearing.

3. Accordingly, Debtor respectfully submits, as an attachment, the Court-authorized transcripts of the aforementioned argumentative hearing.

WHEREFORE Debtor very respectfully prays from this Honorable Court to take notice of the aforementioned Transcripts of the hearing held on April 10, 2012.

RESPECTFULLY SUBMITTED.

CERTIFICATE OF SERVICE: I hereby certify that on this same date the foregoing motion was filed with the Clerk of the Court using the CM/ECF system, which will send notification of this filing to the U.S. Trustee, Standing Chapter 7 Trustee, **Roberto Román Valentín**, Creditor Rafael Ortiz-Negrón's Counsel, **Roberto Figueroa Carrasquillo**, and all CM/ECF participants, and also mailed the same to any creditors in the attached list that are not CM/ECF participants.

In San Juan, Puerto Rico, this 14th day of March, 2013.

/s/ Carlos C. Alsina Batista

Carlos C. Alsina Batista
USDC-PR NO. 222801

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

CARMEN INES ROSADO RAMOS * Case No. 12-327
*
*
* Debtor(s) *
*
*
*
----- April 10, 2012
Old San Juan,
Puerto Rico

HEARING

BEFORE THE HONORABLE BRIAN K. TESTER
FEDERAL BUILDING, OLD SAN JUAN, PUERTO RICO

APPEARANCES:

For the Trustee:

For the Movant: Roberto Figueroa
Carrasquillo, Esq.

For the Respondent: Carlos Alsina Batista, Esq.

CD: Official Courtroom Deputy

(Proceedings taken by electronic recording;
transcription produced by transcription service)

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1 P R O C E E D I N G S

2 (9:53 a.m.)

3 COURTROOM CLERK: (Calling case)

4 MR. FIGUEROA CARRASQUILLO: Good morning.

5 Roberto Figueroa Carrasquillo representing
6 in this case creditor, Mr. Negrón -- Ortiz Negrón.

7 THE COURT: Alright. Good morning.

8 MR. ALSINA BATISTA: Good morning, Your
9 Honor.

10 Very respectfully, Attorney Carlos Alsina on
11 behalf of Debtor Carmen Rosado.

12 THE COURT: Alright. Good morning.

13 Why is this not moot? Because, the
14 abandonment notice was filed almost two months ago,
15 which runs automatically if there's no objection in
16 14 days.

17 It says property was abandoned.

18 MR. FIGUEROA CARRASQUILLO: Yes, Your Honor.

19 Your Honor, we understood that we needed the
20 Court order to go to the Ray Street Group (sic).

21 THE COURT: Not -- not on this property.

22 Once it's abandoned, it's not property of the
23 estate anymore. So, you negotiate directly with
24 them, or you do whatever you think is appropriate in
25 State Court.

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1 But I have it filed on the 22nd of February
2 . So, that ran, maybe, the first week of March.

3 So, I don't think there's really anything
4 else to do with the property, because that's
5 specifically the one that's in the abandonment by the
6 Trustee. So, ... unless there's anything else I
7 missed.

8 MR. ALSINA BATISTA: Yes, Your Honor.

9 There is a motion for avoidance of lien
10 pursuant to 522 (f) .

11 THE COURT: It's moot. That property is not
12 property of the estate anymore.

13 MR. ALSINA BATISTA: I --

14 THE COURT: I think it's that simple. I
15 mean, once it's abandoned, it's not property of the
16 estate. And, then, I don't have jurisdiction over it
17 anymore.

18 MR. ALSINA BATISTA: But, Your Honor, Debtor
19 has an independent right pursuant to the Code to
20 avoid judicial liens.

21 THE COURT: He can do anything he wants in
22 the State Court.

23 MR. ALSINA BATISTA: Your Honor, I mean, we
24 believe it is a bankruptcy right. And that could
25 even be done after the case was closed with a motion

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1 to reopen. And I don't believe there's a time limit
2 for that.

3 THE COURT: Property of the estate,
4 absolutely.

5 But it is no longer property of the estate.
6 Alright? Abandoning property removes it from the
7 estate.

8 MR. ALSINA BATISTA: Well, I understand
9 that, Your Honor.

10 THE COURT: So, you're -- you're -- what
11 you're talking about is if it's still property of the
12 estate.

13 But, if it's not property of the estate,
14 where is my jurisdiction over that?

15 MR. ALSINA BATISTA: Your Honor, because
16 Debtor's relief entails their ability to avoid a lien
17 over property that is hers regardless that it is not
18 going to be administrated by the Trustee.

19 THE COURT: So, they try and avoid a lien in
20 the State Court.

21 MR. ALSINA BATISTA: Your Honor, it's a --
22 it's a federal bankruptcy right.

23 THE COURT: Not anymore.

24 How do I have jurisdiction over a property
25 that's not property of the estate? How would they

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1 be in here independently of that?

2 There'd be no grounds to make any
3 allegations or cause of action against property
4 that's not property of the estate in a bankruptcy
5 court.

6 Do you agree with that?

7 MR. ALSINA BATISTA: (No verbal response)

8 THE COURT: What would be the basis for my
9 jurisdiction if it's not property of the estate?
10 That they just came in here and said "There's a
11 property in Caguas, and we want to sue somebody over
12 it, but it's not property of the bankruptcy estate",
13 where would my jurisdiction come from?

14 MR. ALSINA BATISTA: Because, Debtor --
15 because, Debtor is under bankruptcy protection still,
16 Your Honor.

17 THE COURT: Right. Debtor is.

18 MR. ALSINA BATISTA: And the purpose of 522
19 (f) is to allow Debtor to avoid such liens such as
20 the one that is being asserted by Movant here, and
21 that is part of her -- her fresh start.

22 THE COURT: Isn't 522 (f) for -- to clear
23 the exemption?

24 MR. ALSINA BATISTA: That's right, Your
25 Honor. She claimed an exemption on it.

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1 THE COURT: But there's no exemption rights
2 anymore if it's not property of the estate. The
3 whole thing is abandoned.

4 So, any homestead exemption they might have
5 under Puerto Rico law, obviously they still have, but
6 that property doesn't have anything to do with their
7 estate anymore.

8 So, the Trustee is not going to administer
9 it, not going to stay a position on the exemption,
10 and not going to pay it one way or the other.

11 So, if they have any objection to the
12 exemption or its allowance, it's moot, because it's
13 not property of the estate anymore.

14 MR. ALSINA BATISTA: They don't have an
15 objection to its allowance, Your Honor. The issue is
16 that Debtor -- on the 522 (f), Debtor may -- may
17 eliminate judicial liens through the bankruptcy
18 process when they impair the exemption that she would
19 have if -- if it was not for such lien.

20 And that's the basis for the right. I mean,
21 I -- I understand --

22 THE COURT: But they're avoiding a lien on
23 property that is not part of the estate anymore.

24 So, where would my jurisdiction be based in?

25

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1 MR. ALSINA BATISTA: Your Honor, --

2 THE COURT: Just because it's the Debtor?

3 The Debtor can't sue anyone on anything just because
4 they're in Bankruptcy. There has to be what's called
5 a core proceeding.

6 To make it a core proceeding is it's
7 something that's going to be administered in the
8 estate.

9 This is no longer going to be administered
10 in the estate. It's been abandoned.

11 MR. ALSINA BATISTA: Your Honor, I will
12 respectfully disagree that Debtor's right to avoid a
13 lien under 522 (f) depends on whether the property is
14 being administrated by a Trustee.

15 THE COURT: Well, then, knock yourself out
16 reconsidering it. And you give me case law that says
17 non-estate property, that I have jurisdiction to
18 determine if a lien should be avoided or not on non-
19 estate property, then I'll consider that.

20 But I -- I am not aware of that case law,
21 and I haven't seen it in anything filed yet.

22 So, if you want to bring that up to my
23 attention, then, fine. I'll consider it.

24 But, as it stands now, once property is
25 abandoned, it's no longer part of the estate. When

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1 it's no longer part of the estate, I lose
2 jurisdiction over it. And it doesn't matter if the
3 Debtor has any allegations or causes of action that's
4 not been adjudicated. They can bring that in another
5 forum. But there's no independent jurisdiction in
6 this

7 Court --

8 MR. ALSINA BATISTA: I understand.

9 THE COURT: -- as far as I understand it.

10 But, if you think I'm wrong -- which is not
11 going to be the first time that someone's thought I
12 was wrong -- then you can bring in a reconsideration,
13 and I'll consider whatever you find on the point.

14 MR. ALSINA BATISTA: I -- I appreciate it,
15 Your Honor, because I was not ready to --

16 THE COURT: Yeah, I know.

17 MR. ALSINA BATISTA: -- do it that way.

18 THE COURT: It looks like everyone missed
19 that. But I look for that stuff. That's -- because,
20 if I don't have jurisdiction, then we're wasting our
21 time.

22 MR. ALSINA BATISTA: Thank you, Your Honor.

23 THE COURT: Alright? So, you take a look
24 at it. You know, I would suggest you do it within 14
25 days before it's final and unappealable, and then

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1 I'll see if I agree with you or not and depending on
2 what you brief.

3 I don't know if there's any reason for you
4 to say anything or not. Let's see what he writes
5 first, and let me see if I need to hear from anyone
6 else on it. Okay?

7 MR. FIGUEROA CARRASQUILLO: Yes, Your Honor.

8 THE COURT: Alright?

9 MR. ALSINA BATISTA: Thank you, Your Honor.

10 Permission to be excused?

11 THE COURT: Alright. Thank you.

12 (Whereupon: hearing in this matter is hereupon
13 concluded for this day)

14 (10:00 a.m.)

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1 TRANSCRIBER CERTIFICATION

2
3 I, CRYSTAL INCHAUSTEGUI BREAZ, Transcriber,
4 do hereby certify that the foregoing transcript was
5 transcribed by me to the best of my abilities.

6
7 I CERTIFY that all "(inaudible)" were
8 carefully reviewed and found to be as written.

9
10 I FURTHER CERTIFY that I am not interested in
11 the outcome of the case mentioned in said caption.

12
13 WITNESS MY HAND this 11 day of the month of
14 March, 2013 in San Juan, Puerto Rico.

15
16 _____
17 S/ CRYSTAL INCHAUSTEGUI
18 CRYSTAL INCHAUSTEGUI BREAZ

19 I, DIANE BREAZ, RPR and Official Court Reporter for
20 the District Court of Puerto Rico, certify that the
21 foregoing transcript has been verified and certified
22 by me.

23 _____
24 S/ DIANE BREAZ
 DIANE BREAZ

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Case 12-00327-BKT7

District of Puerto Rico

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US Bankruptcy Court District of P.R.

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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

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